

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LARRY BRACEY,

Plaintiff,

v.

JAMES GRONDIN, C.O. HUNT,
THOMAS TAYLOR, C.O. MURRAY,
C.O. KOELLER and JOLINDA WATERMAN,

Defendants.

ORDER

10-cv-287-bbc

In this civil action for monetary relief, plaintiff Larry Bracey, a prisoner at the Wisconsin Secure Program Facility, is proceeding on claims that defendants James Grondin, C.O. Hunt, Thomas Taylor, C.O. Murray, C.O. Koeller and Jolinda Waterman violated his rights under the United States Constitution and state law. On May 16, 2011, defendants filed a motion for summary judgment, dkt. #36, and the court set a briefing schedule on the motion, giving plaintiff until June 15, 2011 to respond. On June 20 and again on June 27, plaintiff moved the court to extend his time to respond, and the court gave plaintiff until July 1, 2011. On July 5, the court received an eight-page response to defendants' proposed findings of fact, dkt. #55, a four-page affidavit from plaintiff, dkt. #56, and a signature page, on which plaintiff asks the court to deny defendants' motion for summary judgment.

Attached to the plaintiffs' filing was a letter from plaintiff, dkt. #54, stating that this was only part of his opposition materials and that he would send the rest as soon as he received it from his jailhouse lawyer, Dennis Jones-El. Plaintiff also stated that he was not being allowed to communicate with Jones-El. The letter was postmarked July 1.

On July 7, 2011, the court received a brief in opposition to summary judgment, dkt. #59, sent to the court on behalf of plaintiff by Jones-El, and postmarked July 1. Attached to the brief was a signature page that was not signed by plaintiff, but appeared to be the same as the signature page submitted with plaintiff's response to defendants' proposed findings of facts. The clerk's office attached that signed signature page to the brief. Also on July 7, the court received a filing from plaintiff, postmarked July 5, dkt. #61. The filing contained two additional pages for plaintiff's affidavit, five additional pages for plaintiff's response to defendants' proposed findings of fact and five third-party affidavits. The additional pages to plaintiff's affidavit and response to defendants' proposed findings of fact contained signature pages signed by plaintiff and were dated July 5, 2011.

On July 8, 2011, defendants filed a motion to strike plaintiff's response to their motion for summary judgment, contending that it violates Fed. R. Civ. P. 11(a) and 28 U.S.C. § 1746. (The magistrate judge stayed briefing on defendants' motion for summary judgment pending the resolution of the motion to strike. Dkt. #70. Thus, defendants have not filed a reply brief in support of their motion for summary judgment.)

Rule 11(a) requires unrepresented persons to personally sign all papers submitted to

the court and requires the court to strike unsigned papers unless the omission is corrected promptly. Section 1746 requires declarants to declare, verify, certify or state that their statement is true under penalty of perjury and to sign and date the statement. Defendants contend that plaintiff's response to defendants' proposed findings of fact and plaintiff's affidavit must be stricken because neither was signed nor dated when plaintiff filed them on July 5. Also, defendants contend that plaintiff's brief in opposition must be stricken because plaintiff filed the signature page for the brief before filing the brief itself, establishing that plaintiff never read his own brief.

I will deny defendants' motion to strike. Although plaintiff's affidavit and opposition to defendant's proposed findings of fact were incomplete and unsigned when he filed them, he corrected this problem promptly by sending the remaining pages with his signature a few days later. Plaintiff has explained that he had to send his opposition materials in pieces because both he and Jones-El were having difficulties communicating with each other and mailing things through the prison mail system. Additionally, plaintiff has explained that he read his brief, but that Jones-El mailed it because plaintiff was running out of postage money. Dkt. ##74, 76. In sum, plaintiff has now filed and signed all of his opposition materials. The fact that the court received plaintiff's completed materials a few days past plaintiff's deadline has not prejudiced defendants. Therefore, I will not strike plaintiff's opposition materials. Defendants may have until September 2, 2011 to file a reply brief in support of their motion for summary judgment.

ORDER

IT IS ORDERED that

1. Defendants' motion to strike plaintiff Larry Bracey's materials filed in opposition to their motion for summary judgment, dkt. #67, is DENIED.

2. Defendants may have until September 2, 2011 to file a reply brief to their motion for summary judgment.

Entered this 23d day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge